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REVIEWS AND CRITICISMS

DELLA TRUFFA E DI ALTRE FRODI (SWINDLING AND OTHER FORMS OF FRAUD). BY *Alberto Domenico Tolomei*, Athenaeum, Rome, 1915, pp. XV, 576.

This book is an important addition to the series of legal and economic treatises (Collezione di opere Giuridiche ed Economiche). It is of interest both as a compendium of comparative legislation and legal theory, and as the exposition of a thesis in positive criminology. Following the well known positions of Ferri and Sighele his general proposition is that criminality mirrors the diverse aspects of the struggle for existence; hence that fraud is the characteristic mode of modern or evolved criminality in contradistinction to violence which is the mark of primitive, retarded, or atavistic cultures. The author betrays his genuine predilection for the scientific background of social fact in legal questions in his handling of the problem of what we might call 'absolute criminality.' That problem usually occurs in this form: Is it true that progress in civilization means actual decrease in delinquency or only a transformation in the modes of criminality—a mere change in color not in quantity, as Niceforo and others have insisted? Tolomei denies this latter contention not only as paralyzing all wise effort to improve but also as untrue to fact, and brands it as sentimental Marxian pessimism. For his facts he appeals to Italian official statistics. These pretty conclusively show that in that country at least serious crimes against the person have been decreasing. But those against property tend to increase: for example, the rate of swindling rose from 58.35 per 100,000 in 1887-1889 to 68.73 per 100,000 in 1907. In these figures he finds reason for satisfaction, for he approves of Ferrero's maxim that fraud however repugnant in itself is a benediction of God when it eliminates violence, when it makes gold run where blood ran before. As to the causes back of the increase of property crimes we cannot say that the book is altogether exhaustive. In general the author fixes upon city life and modern industrialism as chiefly responsible. He examines Marro's and Lombroso's anthropological studies of swindlers and rejects them as unsatisfactory and unconvincing. He is forced back upon social causes. Examining still further the statistics he finds that four-fifths of all swindlers are males, preponderantly of mature age, i. e., 30 to 50 years old; 30 per cent. are illiterate; and the great majority come from manufacturing, commerce, agriculture and cattle raising.

The larger part of the book is given over to summarizing the treatment of swindling in the past. The laws of Babylon, Mexico, Persia, Egypt, Israel, Arabia, India, Greece, Rome and modern Europe are effectively analyzed, with an abundant citation of authorities. From the study of current law the reviewer picked out the sections on fraud in insurance and emigration as of particular interest. In his conclusions the author criticises the existing Italian code as relatively too severe on certain kinds of fraud; expresses sympathy with the views of Carrara who accuses such laws of turning poverty and hunger into

crime; and seems to lean toward the spirit of the famous English judge who asked, "Shall we indict one man for making a fool of another?"—not of course in any naive sense, but rather by way of a plea for the 'disinherited,' the Have-Nots.

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A SCHEMA FOR THE PSYCHOLOGY OF TESTIMONY. BY *Dr. E. von Kärman*. Archiv für Kriminal-anthropologie und Kriminalistik. Band 61, 2. Heft. 1915.

A twenty years' accumulation of data in this field has failed to yield anything of immediate practical value to the court. The author therefore attempts to indicate in this article the subjective psychological background in testimony and to outline a scientific procedure for determining the validity of an individual's report. Von Kärman admits that this suggested outline makes no claims at completeness but merely touches some of the high spots.

Personal trustworthiness and the objective truth, the "head and tail" of the problem, must first be differentiated. An analysis of the former suggests three main lines of inquiry:

- (a) An inquiry into the exactness of the testimony,
- (b) An inquiry into its accuracy,
- (c) An inquiry into its truth.

The first two are subjective, the last is objective.

(A) *Exactness*: I. Influenced by the physical and mental health of the subject. (1) *Physical*: (a) physical defects such as blindness, deafness; (b) minor or partial defects in the various sense capacities, head injury, color-blindness; (c) pathological manifestations of hyperaesthesia and anaesthesia; (d) in women, the appearance of menstruation, menopause, and pregnancy; (e) in children, arrested physical development; (f) in old people, somatic degeneration.

(2) *Mental*: (a) Mental affections; (b) neuropathic, neurasthenic, hysteroid states, nervous irritability, hypersuggestibility, tendency toward hallucinations; (c) arrested mental development, mental degeneration.

(A) *Exactness*: II. Influenced by any maldevelopment leading to illusions of sensation, and to improper temporal or spatial orientation.

(A) *Exactness*: III. Influenced by the subject's mental state, (intellectual or emotional), at the time of an occurrence. The higher thought processes and emotional states are alike detrimental to exact report. Therefore, "a common farmer, aimlessly wandering about a city's streets, is undoubtedly a better witness than a professor wending his way home from the university." Sometimes, however, the emotional element assists exactness by focussing greater interest upon the object.

(B) *Accuracy*: This relates to the reproduction of past experiences.

I. Memorial accuracy is favorably influenced by mentally re-experiencing the situation sometime before being requested to report; un-